U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31861544

Date: JUL. 11, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a machine learning research scientist, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that he had received a one-time achievement (a major, internationally recognized award) or that he satisfied at least three of the initial evidentiary criteria, as required for the requested classification. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the [noncitizen] has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the [noncitizen's] entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

The Petitioner states that he is one of the few leading speech recognition experts in machine learning. He states that he is well-known for his work developing spoken English audio suitable for training speech recognition systems with limited or no supervision. He seeks to continue his research in the field of machine learning in the United States. Since he does not claim to have a one-time achievement, he must submit evidence meeting at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Petitioner initially claimed that he met three of these criteria:

- (iv), Participating as a judge of the work of others in the field;
- (v), Original contributions of major significance; and
- (vi), Authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The Director issued a request for evidence (RFE), notifying the Petitioner that the evidence in the record demonstrated that he met the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), having participated as a judge of the work of others, and having authored scholarly articles. However, the Director informed the Petitioner that the evidence was not sufficient to establish that he met the other claimed criteria. The Director allowed the Petitioner an opportunity to submit additional evidence to demonstrate that he satisfied at least one more of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In response to the RFE, the Petitioner submitted additional evidence asserting that he meets the following criteria:

- (v), Original contributions of major significance; and
- (ix), Commanded a high salary, or other significantly high remuneration for services, in relation to others in the field.

In denying the petition, the Director again determined that the Petitioner demonstrated that he met only two of the ten criteria. Specifically, the Director concluded that the Petitioner met the criteria at 8 C.F.R. § 204.5(h)(3)(iv), participating as a judge of the work of others, and 8 C.F.R. § 204.5(h)(3)(vi), authorship of scholarly articles. The record supports the Director's determination that the Petitioner satisfied these two criteria.

The Director also determined that the Petitioner claimed but did not submit sufficient evidence establishing that he has made original contributions of major significance in the field; and evidence that he has commanded a high salary or other significantly high remuneration in relation to others in the field. *See* 8 C.F.R. § 204.5(h)(3)(v), (ix). On appeal, the Petitioner maintains that the previously submitted evidence was sufficient to establish that he satisfied these additional criteria. He also submits additional evidence in support of his claims. After reviewing the evidence in the record, we conclude that the Petitioner has demonstrated that he satisfies at least three of the ten initial evidentiary criteria.

To establish eligibility under the criterion at 8 C.F.R. § 204.5(h)(3)(ix), a petitioner must show that they have commanded a high salary, or other significantly high remuneration for services, in relation to others in the field. In evaluating this criterion, USCIS does not interpret the phrase "has commanded" to mean that the person must have already earned such salary or remuneration. Therefore, a credible contract or job offer showing prospective salary or remuneration may establish that the person has been able to command such compensation. *See generally*, 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual (providing guidance on evaluation of initial evidence of extraordinary ability under 8 C.F.R. 204.5(h)(3)(i)-(x)). Evidence relevant to demonstrating an individual's high salary may include comparative wage or remuneration data for the person's field, such as geographical or position-appropriate compensation surveys. *Id.*

In response to the RFE, the Petitioner submitted a 2020 performance summary from his previous employer, [redacted] demonstrating that he was given a 23.75% salary increase, from $156,800 to $194,040, and other benefits for his performance as a research engineer. The Petitioner also submitted a copy of his 2021 IRS Form W-2, Wage and Tax Statement, which reflects his total compensation with [redacted] as $351,289.74. He also provided a copy of his fully-executed employment agreement with his current U.S. employer, a California based technology company focused on developing artificial intelligence. The employment agreement indicates he accepted the position of principal engineer at an annual salary of $180,000, beginning in November 2021, with annual increases upon review, a sign-on bonus of $15,000, and stock options. In addition, the Petitioner submitted comparative wage information in the form of spreadsheets from the U.S. Bureau of Labor Statistics (BLS) providing average annual salary data for positions similar based in California for 2021 and 2022.

The Director's determination that the Petitioner did not meet this criterion was largely based on her conclusion that the comparative wage data was "unreadable." On appeal, the Petitioner submits additional comparative wage data from BLS for similar positions in California. The additional evidence reflects that the average salary for California-based software developers was $146,770 in 2021. The Petitioner's 2021 Form W-2 provides sufficient evidence that the Petitioner "has commanded" a salary as a research engineer, the occupation he intends to pursue in the United States,

and therefore can be compared to the submitted salary data provided for this occupation. The Petitioner's November 2021 employment agreement further demonstrates that his prospective salary as a principal engineer can be compared to the salary data in the record. Upon de novo review of the comparative wage data, we conclude that the Petitioner has established by a preponderance of the evidence that he has commanded a high salary in relation to others in the field. Therefore, the Petitioner has met the requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

With eligibility under this additional criterion, the Petitioner satisfied part one of this two-step adjudicative process described in *Kazarian* and has overcome the basis for the denial of his petition. Accordingly, we will withdraw the Director's decision. Because the Petitioner has met the initial evidence requirements of at least three criteria, it is unnecessary to discuss any additional eligibility claims relating to the regulatory provisions at 8 C.F.R. § 204.5(h)(3)(i)-(x). However, granting the third initial criterion does not suffice to establish eligibility for the classification the Petitioner seeks or establish that the record supports the approval of the petition.

USCIS must now determine whether the record establishes sustained national or international acclaim and recognized achievements sufficient to place the Petitioner among the small percentage at the very top of his field. *See* section 203(b)(l)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. The Director did not reach that finding, and we decline to make the final merits determination in the first instance. We will therefore remand the matter. On remand, the Director should evaluate the evidence and consider the petition in its entirety, including the evidence submitted on appeal, to make a final merits determination.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.